IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.206 OF 2007

Devendra Prasad Sharma,
residing at C/o Mr. D.P.
Sharma, Room No.405,
Jigar Apt., R.No.405,
Anupam Nagar, Murbad
Road, Kalyan (W). .... Petitioner

- Versus -

1. Union of India
   Ministry of Railway,
   Rail Bhavan,
   New Delhi.

2. Divisional Security
   Commissioner,
   Central Railway,
   O/o Railway Protection
   Force, Bhusawal.

3. Dy. Chief Security
   Commissioner, Central
   Railway, Rly.Protection
   Force, Mumbai CST-400 001.

4. Director General,
   Railway Protection Force,
   Railway Board, Rail
   Bhavan, New Delhi. .... Respondents

Sarvasri A.S. Peerzada i/b Burhan V. Bukhari
for the Petitioner.

Shri J.J. Pandian for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
Smt. V.K. TAHILRAMANI, JJ.

DATED: AUGUST 02, 2007

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Rule. Shri J.J. Pandian waives service on

behalf of the respondents. By consent, rule made returnable forthwith.

2. By the present petition, the petitioner is challenging the order dated 21-8-2001, Exhibit-D to the petition. By the impugned order, the services of the petitioner have been terminated by the railway authorities.

3. The challenge to the impugned order is on various grounds. However, it is not necessary to address to all those grounds sought to be canvassed against the impugned order and suffice to refer to only one ground that inspite of the petitioner being selected by due process of law regarding selection of candidates for appointment in a permanent post and having so selected and appointed on probation, during the period of probation his services have been terminated on the ground that he had shown gross neglect and discreditable conduct without even holding an inquiry in that regard and by passing a stigmatic order.

4. Apart from issuing show cause notice, neither charge-sheet was issued nor any inquiry was held in the matter before issuing the impugned order. Placing reliance in the decision of the Apex Court in **Jarnail Singh and others, etc. v. State of Punjab and others,**

reported in 1986 LAB I.C. 1086, the learned Advocate for the petitioner has submitted that the respondents could not have terminated the services of the petitioner on the alleged ground of gross neglect and discreditable conduct without issuing charge-sheet and holding the necessary inquiry. The learned Advocate for the respondents, on the other hand, placing reliance in the decision of the Apex Court in the matter of **Vijay Singh v. Union of India & Ors.,** reported in AIR 2007 SC 1384, submitted that the conduct of the petitioner clearly disentitled him to continue to be in employment and, therefore, no fault can be found with the impugned order. Attention was also drawn to the decision of the Apex Court in the matter of **Union of India and others v. A. Vasu,** reported in (1998) 8 SCC 562 while contending that if this Court is inclined to set aside the impugned order, then the petitioner should be deemed to be on suspension so that the authorities can proceed to conduct the necessary inquiry and take appropriate decision in the matter, and in that regard Rule 138 of the Railway Protection Force Rules, 1987 is sought to be relied upon.

5. The facts that the petitioner was on probation after having been selected in accordance with the provisions of law for the appointment in the post in which he was appointed and that he was on probation at the relevant

time when the impugned order was issued are not in dispute. It is also not in dispute that no charge-sheet was issued nor any inquiry was conducted giving opportunity to the petitioner to defend his case in the matter or to place before the authority his say in the matter are also not in dispute. In the circumstances, the point which arises for consideration is whether the impugned order is a stigmatic order and secondly, whether such an order could have been passed while the petitioner was on probation.

6. As regards the first point for consideration, bare perusal of the impugned order discloses that the services of the petitioner while on probation have been sought to be terminated on the ground that he had shown gross neglect and discreditable conduct and from the attitude on his part, it was proved that he had shown cowardiceness and had committed an offence under Rule VIII of the Railway Protection Force Rules, 147. In that regard, it is sought to be contended on behalf of the respondents that Rule 57.3 of the said Rules empowers the authority to take such an action under such Rule. The Rule 57.3 provides that if during the period of probation or any extension thereof as the case may be, the appointing authority is of the opinion that the member of force is not fit for permanent appointment the appointing authority may terminate the services of a

direct recruit or revert the member of the force to the post held by him prior to such appointment, provided that in case of termination of services of a probationer shall be given notice of one month to that effect or pay in lieu thereof, and further that a notice or pay in lieu thereof shall not be required where the termination of services results as a consequence of the failure of the probationer to pass the initial training course or the repeat course, if any. From the provisions comprised under Rule 57.3, therefore, it cannot be disputed that the services of a probationer could have been terminated if found to be unsuitable for continuation in service. That is different from issuing a stigmatic order. Undoubtedly, Rule 57.3 provides that the authority is entitled to terminate the services simpliciter on account of dissatisfaction of the performance of an employee. That by itself will not empower the authority to issue order in the form of disciplinary action against the employee on account of any misconduct as alleged above. In case of termination of services even of a probationer on account of misconduct on the part of the probationer, it is now well-settled that the authorities have to conduct the necessary inquiry before taking final decision in that regard. Once the fact that no such inquiry was held and the fact that the termination was on account of alleged misconduct on the part of the employee is not in dispute

and further that the order of termination on the face of it discloses it to be stigmatic, certainly such an order cannot be sustained in the absence of inquiry. The decision of the Apex Court in **Jarnail Singh's** case (supra) is very clear in that regard. It was held by the Apex Court in Jarnail Singh's case that:

> "32. The position is now well-settled on conspectus of the decisions referred to hereinabove that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil

and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not. In the instant case we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State-respondent in their several affidavits alleging serious misconduct against the petitioners and also the adverse entries in the service records to these petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Art.311(2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1980. Thus the impugned orders terminating the services of the appellants on the ground

that "the posts are no longer required" are made by way of punishment."

7. As regards the decision of the Apex Court in **Vijay Singh's** case (supra), the respondents cannot take any assistance therefrom as in that case charges were framed and necessary inquiry was conducted before taking decision. Being so, the termination of the employee on account of misconduct in Vijay Singh's case was after following the necessary procedure in terms of the Rules applicable to the parties, that is not the case in the matter in hand.

8. Once it is apparent on the face of the record that the order of termination is a stigmatic one and was issued without holding any inquiry and without giving opportunity to the petitioner to place before the concerned authority his say in the matter, the impugned order cannot be sustained and is liable to be set aside.

9. The Rule 138 of the Railway Protection Force Rules undoubtedly provides that where the penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Force is set aside or declared or rendered void in consequence or by a decision of the Court and the disciplinary authority on consideration of the circumstances of the case, decides

to hold a further inquiry against him on the allegation on which the punishment of dismissal, removal or compulsory retirement was originally imposed, the member of the Force shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders, provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merit of the case. Plain reading of this Rule would disclose that the occasion for application of the said Rule would arise only after passing of the order by this Court and not prior thereto. Besides, for applicability of the said Rule, the disciplinary authority is required to take a decision consequent to the passing of the order by this Court that further inquiry against the petitioner on the allegation made in the original order is worthwhile and necessary. Being so, the occasion to apply the said Rule is yet to arise.

10. As regards the decision of the Apex Court in **A. Vasu's** case (supra), it was held therein that in terms of Rule 10(4) of the CCS (CCA) Rules, 1965, that according to the said Rule the employee was deemed to have been placed under suspension with effect from the

date of the original order of dismissal consequent to setting aside of the order of dismissal of the employee by the Tribunal and consequent to the decision of the disciplinary authority to hold further inquiry into the matter. As the matter stands today, in the case in hand, the disciplinary authority is yet to take decision in that regard as regards the requirement of further inquiry in the matter and it will be too premature for us to express any opinion regarding the applicability of Rule 138 of the said Rules. The appropriate decision in that regard has to be taken by the concerned authority of the respondents consequent to the disposal of this petition.

11. In the result, therefore, the petition succeeds on the limited ground as stated above and the impugned order is hereby quashed and set aside and consequently the rule is made absolute in terms of Para 20 (a) and (b), albeit subject to the powers of the concerned authorities in terms of Rule 138 of the said Rules. There shall be no order as to costs.

(Smt.V.K.Tahilramani, J.) (R.M.S.Khandeparkar, J.)

sjs/A7wpj206.7